

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate Of Public Convenience & Necessity Valley-Rainbow 500kV Inter-Connect Project.

Application 01-03-036
(Filed March 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICES OF INTENT TO SEEK COMPENSATION**

On August 6, 2001, Antelope-Menifee Rural Center (Rural Center), joined by Menifee Valley Community Economic Development Council (CEDCO)¹, jointly referred to as Menifee, moved for acceptance of a late-filed Notice of Intent (NOI) to claim compensation for participation in this proceeding. Menifee's NOI is prepared and submitted pursuant to Pub. Util. Code § 1801 et seq. and Rule 76.71 et seq. of the Commission's Rules of Practice and Procedure.² On August 21, 2001, San Diego Gas & Electric Company (SDG&E) filed a response to the NOI. On August 31, 2001, Menifee filed a reply.

¹ CEDCO did not appear at the June 21, 2001 prehearing conference, and thus does not have appearance status. I will consider the filing at issue to also be a petition to intervene, and grant CEDCO appearance status.

² Unless otherwise indicated, all subsequent citations to code sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

As required by § 1804(b)(1), and in consultation with the Assigned Commissioner, I preliminarily rule that Menifee are customers eligible for an award of compensation, that they have met the significant financial hardship test, and are eligible for compensation in this proceeding.

1. Timeliness

Section 1804(a)(1) provides that an NOI must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. A PHC in this case was held on June 21, 2001, and Menifee filed its NOI 16 days after the statutory deadline. SDG&E argues that the Commission should reject the NOI because it is untimely.

In its motion, Menifee notes that at the PHC, the attorney representing Rural Center indicated that she would be seeking authorization from the Board of Directors for the Rural Center regarding the level of involvement in the case. Authorization to become an active party was not secured until July 13, 2001, at the first meeting of the Board of Directors following the PHC. However, prior to filing its NOI, Rural Center also explored whether local governmental representatives would be participating in the case and would be able to represent the interests of the Rural Center. On July 24, 2001, Rural Center learned that local government officials did not take a position on the Valley-Rainbow project in the Menifee Valley area, despite Rural Center's request that they do so, and thus would not represent Rural Center's interest. On August 4, 2001, CEDCO's Board of Directors voted to join with Rural Center to participate in this case. Menifee considers that these circumstances should excuse its lateness in filing the NOI.

There is no prejudice to parties of the 16-day delay in filing Menifee's NOI. The delay had no impact on the schedule for this proceeding. In contrast, as

Menifee points out, SDG&E recently sought a delay for its prepared testimony. We note that at least Rural Center received authorization from its member organizations several days before the NOI deadline. On the other hand, its efforts to coordinate resources, and to determine if local government officials would represent their position, were reasonable and consistent with the legislative intent that intervenor compensation be awarded only for participation that is productive and “necessary for a fair determination” of the issues. (See § 1801.3(f).) Therefore, we will not reject Menifee’s NOI out of hand, as suggested by SDG&E, but will grant Menifee’s motion for acceptance of the late-filed NOI and consider the NOI on the merits.

2. Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a “customer” and that participation without compensation would pose a significant financial hardship.

2.1 Customer Status

Section 1802(b) defines the term “customer” as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of

its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. (*See* D.98-04-059, *mimeo.*, at pp. 83 and 88.)

2.1.1 Rural Center

Rural Center was founded in 1931 and now is a non-profit organization whose purpose is to serve and further the interests of residents of the rural areas of the Antelope and Menifee Valleys. One of the explicit purposes of the Rural Center, pursuant to its bylaws (attached to the NOI) is to further the advancement of the general welfare of the neighborhood. Rural Center's eight Directors are residential utility customers from the Antelope and Menifee Valleys. One Director is also a farmer who pays agricultural utility bills in addition to his residential bills. Residential utility customers make up its entire membership.

SDG&E argues that Rural Center has not established that it is a customer because its bylaws do not explicitly authorize it to represent residential ratepayers. Rather, Rural Center is an existing non-profit organization, not formed explicitly to represent ratepayers, but rather to broadly represent its members in matters of interest to in the local area. This case involves siting of a transmission project, which clearly has the potential to affect neighborhoods it passes by and through. The statute requires that entities seeking customer must establish that they represent the interests of residential customers. In this case, Rural Center has established that its members are residential customers, and it represents their interests in advancing the general welfare of their neighborhood. Therefore, Rural Center's showing is adequate to establish its status as a Category 3 customer.

2.1.2 CEDCO

CEDCO is a non-profit public benefit corporation formed to foster and promote economic, cultural, and educational growth in the areas of Sun City, Menifee and Quail Valleys. Its 1994 Articles of Incorporation were attached to its NOI. All of CEDCO's Directors live in the communities of Sun City, Menifee and Quail Valleys and are residential utility customers. Ninety-five percent of its members are residential utility customers.

SDG&E argues that CEDCO has not established that it is a customer because its bylaws do not explicitly authorize it to represent residential ratepayers. CEDCO is an existing non-profit, not formed explicitly to represent ratepayers, but rather to broadly represent its members in matters of interest to in the local area. This case involves siting of a transmission project, which clearly has the potential to affect economic growth in the communities it passes by and through. The statute requires that entities seeking customer must establish that they represent the interests of residential customers. In this case, CEDCO has established that its members are residential customers, and it represents their interests in advancing the economic growth of their area. CEDCO's showing is adequate to establish its status as a Category 3 customer.

2.2 Significant Financial Hardship

Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. For a group or organization, § 1802(g) defines financial hardship as a state in which "the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding."

Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed.

Section 1804(b)(1) states in part:

“A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.”

Menifee’s members are residential customers whose individual interests in this proceeding are small relative to the costs of participation and the cost of their participation in Commission proceedings substantially outweighs the benefit to any individual customer it represents. No economic benefit from participation inures because their interest in the proceeding is in maintaining the integrity of their community and discouraging unnecessary or intrusive transmission lines in their community. Menifee’s expected costs of participation will include retention of experts to study the topographic/geographic, economic, and environmental impacts of the proposed project specifically to the Menifee Valley. Thus, its participation also has a broader environmental and societal interest that is not easily further monetized. Menifee’s participation also benefits a wide range of customers.

Neither Rural Center nor CEDCO collect dues from their members. Rural Center relies on occasional fundraising events and rental fees from its community center for financial stability. CEDCO’s bylaws prohibit it from raising funds other than to pursue cityhood. Thus, neither organization has the funds available to intervene in the proceeding effectively.

We conclude that Menifee has satisfied the showing of significant financial hardship. A finding of significant financial hardship in no way, however, ensures compensation for SSRC (Section 1804(b)(2)).

3. Nature and Extent of Planned Participation; Estimate of Compensation

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

3.1 Planned Participation

The Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, *mimeo.*, at pp. 27-28, 31-33.) Parties are encouraged to coordinate amongst themselves to ensure that efforts are not duplicated.

In this proceeding Menifee expects to pursue discovery, prepare testimony, participate in hearings, submit briefs and comments as required. Menifee plans to focus specifically on topographic/geographic, economic, and environmental impacts of the proposed project to the Menifee Valley. Menifee is also considering retaining experts to evaluate development and property values in the local area.

Menifee states that it is the only party in this proceeding representing the community interests of residential customers in the Menifee Valley area, a separate section of the proposed transmission project from that represented by Save Southwest Riverside County, another intervenor in the case. Approximately 15 miles of the proposed project pass by or through the Menifee Valley. Customers living in this area would be unrepresented without Menifee's

ability to participate. While other groups and government entities are also participating in the proceeding, Menifee does appear to be the only group specifically representing the interests of this group of customers.

Participation in Commission proceedings by parties representing the full range of affected interests is important and ensures a fully developed record. In this case, the issues are numerous and complex, and the Commission will benefit from the participation of parties whose interests, while potentially overlapping, may also diverge on specific issues. Thus, I preliminarily find that Menifee represents customer interests that will be underrepresented if they are unable to participate effectively. Because there are many groups with overlapping interests, however, I caution Menifee that compensation will not be paid for duplicative efforts. Merely appearing and stating positions will not assure compensation. I encourage Menifee to work actively with the other parties and the Commission staff to agree among themselves, on issues that they will each address, in order to avoid duplication of effort in addressing these issues.

3.2 Estimate of Compensation

Menifee estimates a total projected budget of \$168,250 as follows:

Attorney/Category	Estimated Hours	Hourly Rate	Estimated Cost
Attorney	300	\$200	\$60,000
Research Assistance	150	\$100	\$15,000
GIS Expert	150	\$200	\$30,000
Economic Expert	150	\$200	\$30,000
Appraiser	150	\$200	\$30,000
Clerical Assistance	150	\$15	\$2,250
Estimated expenses			\$1,000

	TOTAL		\$168,250
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Menifee represents that this is a preliminary estimate.

Menifee does not justify its requested hourly rates and must address the reasonableness of the requested rates in their ultimate Requests for Compensation. The itemization prepared by each intervenor at this time fulfills the requirements of § 1804(a)(2)(A)(ii). This ruling in no way ensures compensation.

Manifee is cautioned that it should carefully document the number of hours and hourly fees for counsel and expert witnesses and carefully allocate such expenses to specific issues pursued in this and the related cases. It should also review Commission orders and, in preparing its compensation request, take into account the Commission's practices for reducing hourly rates and hours claimed, e.g., for travel time and time spent on the compensation request itself.

IT IS RULED that:

1. Menifee Valley Community Economic Development Council (CEDCO) is granted appearance status. CEDCO is represented by the same counsel (Barbara Spencer) as Antelope-Menifee Rural Center (Rural Center) and should be added to her appearance.

2. Rural Center and CEDCO's joint motion for acceptance of its late-filed Notice of Intent to claim compensation is granted.

3. Rural Center has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible for compensation in this proceeding. Rural Center is a customer as that term is defined in § 1804(b) and is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers.

4. CEDCO has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible for compensation in this proceeding. CEDCO is a customer as that term is defined in § 1804(b) and is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers.

5. Rural Center and CEDCO fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.

6. A finding of eligibility in no way assures compensation.

7. Parties requesting compensation shall make every effort to reduce duplication of contribution.

Dated October 19, 2001, at San Francisco, California.

 /s/ MICHELLE COOKE
Michelle Cooke
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge’s Ruling Regarding Notices of Intent to Seek Compensation on all parties of record in this proceeding or their attorneys of record.

Dated October 19, 2001, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

